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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WERNER METZ

Appeal 2008-0056
Application 09/836,978
Technology Center 2600

Decided: July 15, 2008

Before KENNETH A. HAIRSTON, MAHSHID D. SAADAT,
and CARLA M. KRIVAK, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1, 5-11, 14, 17-21, 26-28, and 30. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF CASE

Appellant's claimed invention is a method, article, and system for locating a position of a sensing device on a display screen by detecting a particular sequence of characteristic values that is unique to a given location (Abstract).

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method comprising:

resolving a display into at least two regions; and

generating a different sequence of characteristic values each corresponding to a unique sequence of primary colors in each of said regions until the position of a sensor with respect to said regions is determined.

REFERENCES

Mumford	US 6,377,249 B1	Apr. 23, 2002 (Filed Nov. 9, 1998)
Wiebe	US 6,689,966 B2	Feb. 10, 2004 (Filed Mar. 21, 2001)

The Examiner rejected claims 1, 5-11, 14, 17-21, 26-28, and 30 under 35 U.S.C. § 103(a) based upon the teachings of Mumford and Wiebe.

Appellant contends that neither Mumford nor Wiebe, alone or in combination, teaches or suggests "generating a different sequence of characteristic values each corresponding to a unique sequence of primary colors in each of at least two regions of a display *until* the position of a sensor with respect to the regions is determined" (App. Br. 11).

ISSUE

Did the Examiner err in rejecting claims 1, 5-11, 14, 17-21, 26-28, and 30 under 35 U.S.C. § 103(a) as obvious under the teachings of Mumford and Wiebe?

FINDINGS OF FACT

1. Appellant's invention teaches a plurality of regions 12-18 (Fig. 1) within a frame 10 that are each assigned a particular detectable characteristic. The characteristics may be a color, gray scale value, non-visual characteristic, etc. A spatial characteristic may be detected to uniquely determine the location of a sensor tuned to detect the characteristic that is used to determine the position of a sensor such as a light pen (Spec. 3-4; App. Br. 7).
2. In one embodiment, each region is assigned one of three different characteristic values at three different times. "The three characteristic values create a unique sequence distinguishable" from region to region (Spec. 4:13-14).
3. Mumford teaches an electronic light pen system where positional information of a light pen is calculated based on the relation of the color measured to a color previously programmed and presently displayed at any instant in time. Optical detectors have red, green, and blue filters to determine the brightness of each color. (Abstract).
4. Each of the pixels in Mumford is of a known overall color that comprises known levels of luminance of red, green, and blue (col. 6, ll. 11-13).

5. Wiebe teaches a system and method for determining positional information including a plurality of symbols each having at least two different values. Markings on each symbol include information representing more than one spatial resolution (Abstract).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If the Examiner’s burden is met, the burden then shifts to the Appellants to overcome the *prima facie* case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *Id. at* 1445.

ANALYSIS

Claims 1, 6, 7, 9, 11, 14, 17, 19-21, 27, and 30

The Examiner contends that Mumford teaches all the features of the claims except for disclosing a different sequence corresponding to a unique sequence. The Examiner further contends that Wiebe discloses generating a

unique sequence of characteristic values (Ans. 3).¹ Thus, according to the Examiner, it would be obvious to “incorporate the unique sequencing as shown by Wiebe in Mumford as unique sequencing in [a] position determination are advantageous as there would be no errors or confusion in determining the position.” (Ans. 3)

Appellant asserts that neither Mumford nor Wiebe “teaches or suggests generating a different sequence of characteristic values each corresponding to a unique sequence of primary colors in each of at least two regions of a display *until* the position of a sensor with respect to the regions is determined, as recited by claim 1.” (Br. 11). Appellant further asserts that neither reference teaches or suggests generating a unique sequence of primary colors (Br. 11). We agree with Appellant.

Mumford teaches that each pixel has the same sequence of primary color choice: R, G, B, rather than a unique sequence of primary colors in each region (col. 7, ll. 43-47; col. 8, ll. 10-15). Wiebe teaches a plurality of symbols, the symbols comprising a raster point and at least one marking, each having at least two different values (col. 2, ll. 29-31). Further, a symbol is used such that the value is specified by the location of a marking in relation to the raster point. Thus, there is one symbol for each value (col. 2, ll. 39-42). Combining the raster point system of Wiebe with the pixel system of Mumford would not result in Appellant’s representative claim 1 that recites generating a different sequence of characteristic values each corresponding to a unique sequence of primary colors. Because Mumford does not teach this feature, and Wiebe provides nothing to overcome

¹ We refer to the second Examiner’s Answer mailed January 11, 2007.

Mumford's deficiencies, claims 1, 6, 7, 9, 11, 14, 17, 19-21, 27, and 30 are not obvious over Mumford and Wiebe.

Claims 5 and 26

Claims 5 and 26 depend from claims 1 and 20, respectively. We do not sustain the rejection of claims 5 and 26 for the same reasons set forth above with respect to their base claims 1 and 20.

Claims 8, 18, and 28

Claims 8, 18, and 28 depend from claims 1, 11, and 20, respectively. We do not sustain the rejection of claims 8, 18, and 28 for the same reasons set forth above with respect to their base claims 1, 11, and 20.

Claim 10

Claim 10 depends from claim 1. We do not sustain the rejection of claim 10 for the same reasons set forth above with respect to base claim 1.

CONCLUSION

We therefore conclude that the Examiner erred in rejecting claims 1, 5-11, 14, 17-21, 26-28, and 30 under 35 U.S.C. § 103(a).

DECISION

The decision of the Examiner rejecting claims 1, 5-11, 14, 17-21, 26-28, and 30 is reversed.

REVERSED

KIS

TROP PRUNER & HU, P.C.
1616 S. VOSS ROAD, SUITE 750
HOUSTON, TX 77057-2631